

(i) for each of the elected weighting factors, multiplying the selected weighting factor by a data value from the retrieved merchant information to calculate a weighted category score, and

(ii) summing the weighted category scores to calculate the merchant score;

5 [and]

ranking the merchants according to the calculated merchant score, wherein the retrieved merchant comparison information excludes information obtained from surveys or specifying the opinion of a person; and

returning the ranking of merchants to the consumer, the ranked merchants  
10 corresponding to the query specifying a product or service.

### **RESPONSE**

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Claims 1-7, 14-16, 20-23, 27-28, 30 and 36-47 are pending in the present application. Claims 1, 14, 36 and 39 have been amended. In particular, claim 1 has been amended to reflect the changes in the interview summary claim. Claims 14, 36 and 39 have been amended to incorporate the changes expressed in Claim 1 of the Interview Summary and  
20 thereby distinguish them over the cited references.

### **NOTE ON CLAIM 1 AMENDMENT**

The amendment to Claim 1 includes all of the words added in the Interview Summary  
25 Claim 1, but differs in underlining and in removal of one word to properly reflect the changes to claim 1 as pending before this RCE. Specifically, the last two lines of Claim 1 of this RCE are underlined to reflect that these lines have been added and were not in the previously pending claim, whereas they were not properly underlined in the Interview Summary Claim

1. Additionally, at line 18 of Claim 1 “a” is shown as deleted in [a weighting factor] whereas Claim 1 of the Interview Summary incorrectly indicated deleting “the”. Applicant is aware of no other discrepancies between the Interview Summary Claim 1 and Claim 1 of this RCE, and Applicant has made every effort to both comply with the rules and honor the changes  
5 agreed as distinguishing over the prior art as reflected in Interview Summary Claim 1.

### 103 REJECTION - BIZRATE.COM AND GELLER

The seventh Office Action, mailed on August 22<sup>nd</sup>, 2006, rejected claims 1-7, 14-16,  
10 20-23, 27, 28, 30 and 36-47 under 35 U.S.C. §103 as being unpatentable over BizRate.com in view of Geller [USP 6,236,990 B1].

Per the Examiner Interview conducted on December 28, 2006, Claim 1 as amended in the Interview Summary is allowable over the cited references for at least the following reasons.

15 Claim 1, as amended, includes entering weighting factors prior to receiving query information; “entering by a consumer a set of weighting factors prior to receiving query information related to a potential consumer purchase”. The reference BizRate.com does not teach or disclose entering weighting factors prior to receiving information relating to a query. To the contrary, the BizRate.com reference has a consumer enter a query, and this query is  
20 returned to the consumer without entering or use of weighting factors. As described on page 11 of the BizRate.com reference, consumers may perform sorting and filtering after the query information has been entered or received and after the merchant rank has been returned. Page 3 of BizRate.com does not allow entering, selecting, or receiving weighting factors prior to receiving a ranking of merchants.

25 Similarly, secondary reference Geller neither teaches nor discloses entering, receiving or selecting weighting factors prior to receiving query information. To the contrary, Geller discloses the user selecting a product category prior to answering questions, the answers to which are joined with expert evaluation ratings to produce a rank (Column 2, lines 26-27).

Claims 14, 36 and 39 have been amended to include entering, selecting or receiving weighting factors prior to receiving query information, and are therefore allowable for the reasons stated above.

The pending claims further distinguish over the cited references by using non-opinion merchant data. BizRate.com uses its “proprietary customer satisfaction measurement technology” (BizRate.com page 35) to collect consumer satisfaction response information – i.e., attitudinal responses, otherwise characterized as “opinions” – to rank merchants. (According to Merriam-Webster’s dictionary on-line, attitudinal means: 1) relating to, based upon, or expressive of personal attitudes or feelings. Source: <http://www.m-w.com/dictionary/attitudinal>. Thus it is that BizRate.com registers opinions – i.e., subjective judgments – which being constrained by the personal experience and feelings of a particular individual may have at any given moment, may or may not be objective.) Where merchants choose not to participate in the program, BizRate.com employs staff reviewers to mimic consumers, by having staff actually purchase products and respond to the satisfaction experienced across the same 10 dimensions of service BizRate.com has identified as relevant to a shopping experience, which include price and product availability.

The point to recognize is that there are two categories of information contained within BizRate.com: 1) opinion information collected from customers or from BizRate.com staff purchases, and 2) non-opinion information about the merchant, gathered by staff and contained in the detailed report. The non-opinion information (referenced on BizRate.com page 8, and described on pages 28-29 of BizRate.com) may only be searched and filtered after the initial query. The non-opinion information does not enter into the rating or ranking. BizRate.com teaches opinion data for ranking, and using non-opinion data for activities other than ranking merchants.

The example of BizRate.com’s use of opinion data for ranking (given on pages 13-14 – i.e., rating dimensions of “price” and “product availability”) actually refers to opinions of previous customers or staff held regarding the price they paid or their opinion on availability of the product. These opinions on price and availability are used in the ranking of merchants.

Nowhere within BizRate.com is there any disclosure of the use of actual price or other non-opinion data in the ranking of merchants.

BizRate.com's use of opinion data as the basis of rankings is made clear in a statement of BizRate.com's Chairman and Chief Product Officer to SearchEngineWatch in  
5 December 2003:

"The company began life as an online business ratings company providing a business reputation system to buyers, according to Farhad Mohit, BizRate.com's Chairman and Chief Product Officer."

10 Source: Chris Sherman. "What's New in Shopping Search," Search Engine Watch, 12/09/03. <http://searchenginewatch.com/showPage.html?page=3285871>

A reputation according to one online dictionary is "the opinion which people in general have about a person etc." [Kernerman English Multilingual Dictionary (Beta  
15 Version): <http://dictionary.reference.com/browse/reputation>]. This supports Applicant's assertion that BizRate.com, prior to the filing of the present application, is a proprietary system based on consumer opinion data which teaches away from the use of non-opinion data for ranking merchants.

A press release by Coremetrics, describing a partnership deal with BizRate.com, dated  
20 5/21/02, illustrates how BizRate.com is known by those of ordinary skill in the art. The Press release states:

"Through BizRate.com's unbiased consumer rating system, compiled exclusively from point-of-sale and fulfillment surveys of participating merchants,  
25 shoppers can compare merchants across 10 service dimensions."  
([http://www.coremetrics.com/news/media/2002/pr02\\_05\\_21\\_bizrate.html](http://www.coremetrics.com/news/media/2002/pr02_05_21_bizrate.html))

This evidences that those of ordinary skill in the art view BizRate.com as a business ratings company, which uses customer satisfaction surveys as the foundation of a business

reputation system that it presents to buyers. While this statement was made after the filing date of the present application, as the Chairman and Chief Product Officer of BizRate.com noted that BizRate.com “began life as an online business ratings company providing a business reputation system to buyers” and shows how BizRate.com has continued to be perceived. One of ordinary skill in the art would not consider it obvious to modify the reference BizRate.com to apply weights to non-merchant data.

Claim 1 applies the weighting factors by “multiplying one weighting factor from the entered set of weighting factors against one data value from the corresponding merchant data category” where the merchant data “includes non-opinion data”. Claim 14, 36 and 39, as amended, include applying weighting factors to non-opinion data, and therefore distinguish over BizRate.com for at least the reasons stated above.

Similarly, secondary reference Geller discloses an “opinion-based” system where a user initiates a query, which prompts a series of questions to be presented, answers against which are joined with “expert evaluation ratings” on the products to generate a rank that indicates which product the expert believes best meets the user’s needs. The intent and purpose of Geller as a knowledgebase system is made clear in Geller: “Attributes for each product category are identified and products within each category are evaluated by experts who can compare each of the products and how they rate with respect to each attribute.” Additionally, “each of the products in each category is rated for compliance with the attributes identified...” (Geller Column 2, lines 20-25.) “Because experts test and evaluate the products, and the preference of the user is used to rank each product in a category, the user is able to see product rankings that are tailored to his or her requirements without requiring the user to learn how to operate multiple competing products...” (Gellar, Column 2, lines 38-42). Thus, it becomes clearly evident with Geller, the evaluation rating represents the expert’s “opinion” on what the consumer needs or wants, and does not correspond to actual information on the product.

Geller also makes clear the use of and reliance on opinion data when Geller uses the term “general information” to distinguish non opinion data such as price and availability.

Specifically, “the user can obtain general information such as price and availability by positioning the mouse pointer in the first column and the row corresponding to the product about which additional information is desired and single clicking.” (Geller, Column 6, lines 28-32).

5           Similarly, Claims 14, 36 and 39, as amended, includes applying weighting factors to merchant data that is not opinion data.

### 103 REJECTION - BIZRATE.COM AND GELLER AND GUAY

10           The seventh Office Action, mailed on August 22<sup>nd</sup>, 2006, rejected claim 4 under 35 U.S.C. §103 as being unpatentable over BizRate.com in view of Geller [USP 6,236,990 B1] in further view of Guay [USP 6,321,218 B1].

          As with the BizRate.com reference and Geller, Guay does not teach or disclose entering weighting factors prior to receiving query information. Additionally, Guay does not  
15   teach or disclose applying weighting factors to non-opinion data. As discussed above, all four pending independent claims include these limitations and therefore distinguish over Guay, alone or in combination with Geller and BizRate.com.

### 112 SECOND PARAGRAPH REJECTION

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          The office Action mailed on August 22<sup>nd</sup>, 2006 rejected claim 14 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out the claimed subject matter. Specifically, the Office Action asserts that it is unclear which “user specified product” is being referenced at line 18.

25           Applicant has amended Claims 14 to rectify the antecedent basis problems cited in the seventh Office Action. Specifically, Claim 14 has been amended to clarify that it the user specified product identified by the query information, as amended, at lines 3 of this RCE. References to user specified product at (amended) lines 2, 5, 18 and 21 of this RCE refer to

the user specified product of the entered query information first mentioned in the claim at line 2 of this RCE, such query information received at lines 3, and the ranking of merchants offering the user specified product at line 18. Applicant has amended claim 14 to use “said” before “user specified product” at lines 3 and 18 to more distinctly point out the referring  
5 back to the first use of “user specified product” at line 2.

## 112 FIRST PARAGRAPH REJECTION

The office Action mailed on August 22<sup>nd</sup>, 2006 rejected Claims 1-14 under 35 U.S.C.  
10 § 112, first paragraph, as failing to comply with the written description requirement. Specifically, Claim 1 was rejected on the basis that “entering a set of weighting factors prior to receiving information related to a potential consumer purchase” is not supported in the specification. As Applicant pointed out during the December 28<sup>th</sup> Interview, the specification includes multiple instances where a claimed feature is supported in different possible  
15 embodiments, at multiple instances, or on different pages of the present application. Examples of support given below do not imply that support is not found in other portions of the present application.

Support for the entering, or receipt, of weighting factors prior to the entering, or receipt, of query information is given on page 25 of the original application, where in Figure  
20 4A “a ranking customization button (404) allows the consumer to connect to a weighting factor customization page (410) shown in Figure 4B.” By clicking on the “ranking customization button” the consumer may be taken to a page such as Figure 4B. Also, at page 29 in “response to the consumer’s clicking on the ranking customization button the system presents the consumer with the weighting customization page (410) shown in Figure 4B.”  
25 The consumer does not have to enter a search query prior to clicking on the “ranking customization button,” but can instead simply click first on the “customize ranking button.”

Once the consumer is presented with a page like page 4B, the consumer may enter weighting factors and, correspondingly, the system would receive the entered weighting

factors. As described on page 26 of the original application: a “consumer may enter their own weighting factors in the weighting fields, thereby ascribing a weighting factor to the item of comparison information in the adjacent comparison fields.” As stated on page 27: “Optionally, the items of comparison information could be arranged into categories,”

5 allowing weighting factors to correspond to categories of comparison information data..

Additional support is given on page 30 - 31: “The weighting fields (413) and (417) and the category fields (415) corresponding to either, or both, the comparison information and the categories, may either be blank or may display suggested weighting factors to the consumer. The user may enter or modify the weighting factors corresponding to either, or  
10 both, the comparison information or the categories. The fields corresponding to the category fields may [be] either blank or include suggestions on associations for the consumer.” Also, on page 30 “at step (425) the system receives the weighting factors displayed when the consumer clicked on the weighting reset button.”

Support for numerical values for weighting factors is supported at page 30 where “the  
15 system could allow for weighting factors to correspond to a percentage contribution to the aggregate score of the ranking.”

Support for applying weighting factors to non-opinion merchant data is provided, for example, at pages 9-13 in connection with Figure 2A-2F, where multiple examples of non-opinion merchant data are given.

20 Applying weighting factors to merchant data is described in connection with Figure 3, for example on page 14 at “step (309) where the weighting factors are applied to the comparison information.” Additional support for the application of weighting factors to merchant data is given in connection with Figures 5A-C at page 33, where “the process of calculating an aggregate score for a given merchant and comparing the aggregate scores to  
25 determine a ranking of merchants offering the product specified in the consumer’s query.” (Figures 5A-C are described on pages 33-36.)



Support for returning the ranking to the consumer is provided in connection with Figure 3, where step 311 "Return Ranking to Consumer" is the last step illustrated in process 300 of Figure 3.

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## CONCLUSION

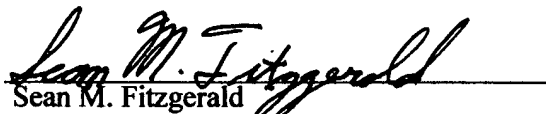
The claims, as amended, distinguish over the cited references. All of the amendments to the pending claims, and all of the limitations in the pending claims, are supported in the specification. Claim 14 has also been amended to more distinctly point out the claimed subject matter. All other claims depend from claims 1, 14, 36 and 39 and are therefore allowable for at least the above stated reasons. Applicant believes the pending claims, as amended, are allowable.

15 Applicant would like to thank Examiner Pham for the professionalism and diligence Examiner Pham as demonstrated and most recently shown during the Interview conducted on December 28<sup>th</sup>, 2006. Applicant respectfully requests the Amendment be entered and the present application be passed through to allowance.

Respectfully submitted,

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